

FCC MAIL SECTION

Federal Communications Commission

DA 97-874

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 97-126
Table of Allotments,)	RM-9074
FM Broadcast Stations.)	
(Saint Florian, Alabama))	

NOTICE OF PROPOSED RULE MAKING

Adopted: April 23, 1997

Released: May 2, 1997

Comment Date: June 23, 1997

Reply Comment Date: July 8, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Frederick A. Biddle dba Power Valley Enterprises ("petitioner") requesting the allotment of FM Channel 274A to Saint Florian, Alabama, as that locality's first local aural transmission service. Petitioner stated a commitment to apply for Channel 274A, either individually or as an entity of which he is a part, if it is allotted to Saint Florian, Alabama, as requested.

2. In support of the proposal petitioner states that Saint Florian (population 388),¹ located in Lauderdale County (population 79,661), is currently devoid of local transmission service. No other evidence of community indicia is provided. According to the 1995 Rand McNally *Commercial Atlas and Marketing Guide*, Saint Florian receives mail through Florence, Alabama.²

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the proponent of a channel allotment must demonstrate the place to be a geographically identifiable population grouping. *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 (1982). See also *Oak Grove, Florida*, 5 FCC Rcd 3774 (1990); *Hannibal, Ohio*, 5 FCC Rcd 3315 (1990); and *Statenville, Georgia*, 5 FCC Rcd 2685 (1990). In questionable instances, the proponent may show that the residents of the locality are commonly regarded as a distinct group. This can be accomplished by the testimony of local residents or by objective or subjective evidence indicating the existence of a

¹Population figures reported by the petitioner are from the 1990 U.S. Census.

²The postal zip code attributed to Saint Florian is also one of three assigned to Florence, Alabama.

community. *Beacon Broadcasting*, 2 FCC Rcd 3469 (1987), *aff'd* 2 FCC Rcd 7562 (1987). While recognizing that Saint Florian is listed in the 1990 Census with a population of 388, and is incorporated, we may ascertain that a population grouping as meager as Saint Florian does not constitute a community for allotment purposes where the community may be devoid of the customary considerations associated with determining community status such as a library, shopping centers, churches, a newspaper and civic organizations. See e.g., *Searles Valley, California*, 3 FCC Rcd 5221 (1988); see also *Naples, Florida*, 41 RR 2d 1549 (1977). Other examples of objective indications of community status include, *inter alia*, the existence of political, social, economic, commercial, or cultural organizations and services in the community. See *Kenansville, Florida*, 5 FCC Rcd 2663 (Policy & Rules Div. 1990), *aff'd* 10 FCC Rcd 9831 (1995). Petitioner should also demonstrate a nexus between the latter entities and the community in question. Based upon the petitioner's initial presentation, we cannot determine Saint Florian's community status for allotment purposes under the *Beacon Broadcasting* or *Kenansville* test. Therefore, petitioner is requested to provide additional documented information regarding the attributes of Saint Florian, Alabama, consistent with the above guidelines. Failure to provide the requested information will result in a denial of the proposal.

4. We believe the petitioner's proposal to provide Saint Florian, Alabama, with its first local aural transmission service, should it be deemed a community ultimately for allotment purposes, warrants additional consideration. Therefore, we invite comments on the proposal, as indicated *infra*.

5. A staff analysis of the proposal indicates that Channel 274A can be allotted to Saint Florian, Alabama, consistent with the requirements of Section 73.207(b)(1) of the Commission's Rules provided the transmitter therefor is located at least 9.3 kilometers (5.8 miles) north thereof, utilizing coordinates 34-57-08 and 87-39-30.³

6. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to Saint Florian, Alabama, as follows:

City	Channel No.	
	Present	Proposed
Saint Florian, Alabama	--	274A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

³The site restriction is required to negate a short spacing to the licensed site of Station WOWC(FM), Channel 273C, Jasper, Alabama, at coordinates 33-28-51 and 87-24-03.

8. Interested parties may file comments on or before June 23, 1997, and reply comments on or before July 8, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's consultant, as follows:

Kirk A. Tollett
Commsouth Media, Inc.
716 North Miller Avenue
P.O. Box 810
Crossville, TN 38557-0810

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.